

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT No. 124-44-4674  
Issued to: Domingo LEON, JR.

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2405

Domingo LEON, JR.

This appeal has been taken in accordance with 46 CFR 5.30-15.

By order dated 21 May 1985, and Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, revoked Appellant's merchant mariner's document upon finding proved a charge of misconduct. The charge was supported by three specifications which alleged that Appellant, while serving as A.B. on board the S.S. STONEWALL JACKSON, on or about 1 February 1985 wrongfully failed to perform his duty as lookout by being asleep on watch; on or about 3 February 1985 wrongfully failed to perform his duty as lookout by not relieving the watch; and on or about 19 February 1985 had in his possession marijuana.

On 18 June 1985, Appellant filed a notice of appeal and requested a temporary document pending appeal. The Administrative Law Judge denied the request by order dated 21 June 1985.

BASES OF APPEAL

This appeal has been taken from the denial of a temporary document. Appellant urges that he has been a merchant mariner for fifteen years, that until these proceedings he has had a clean and unblemished record, and that without his merchant mariner's document he lacks the expertise to obtain substantial and gainful employment.

APPEARANCE: James A. Altman, Esq., 84 William St., Suite 1501 New York, New York 10038

OPINION

I

A request for a temporary document is governed by the provisions of 46 CFR 5.30-15, which provides, in part:

(b) The Administrative Law Judge or  
Commandant grants the request for a temporary

document based on:

(1) Whether the service of the individual involved on board a vessel at the time of the request, or immediately thereafter, is compatible with the requirements for safety of life and property at sea.

(2) The individual's prior record.

In this case, the Administrative Law Judge considered Appellant's request in light of the required considerations and concluded that Appellant is unsuited to serve aboard ship and would constitute a threat to life and property at sea. The Administrative Law Judge noted the fact that Appellant had been in possession of marijuana, had failed to stand watch as scheduled, and had fallen asleep while serving as lookout, and concluded that "(t)aken as a whole, the evidence here reveals that Mr. Leon should not be permitted to serve aboard a merchant vessel while the appeal is pending."

The fact that denying Appellant a temporary document would cause a hardship is not reason to grant him that document. The fact that Appellant has no prior Coast Guard record, while a factor in his favor, is not determinative of the issue. Appellant's employment record and lack of prior Coast Guard offenses are matters for consideration by the Administrative Law Judge in deciding whether or not to grant a temporary license and document. In cases, such as this, where an individual is found to be wrongfully in possession of drugs aboard ship, an Administrative Law Judge's determination that he would be a hazard to the safety of life and property at sea is not unreasonable. Appeal Decision 2397 (GEWANT).

#### CONCLUSION

Appellant has not established sufficient cause to disturb the order of the Administrative Law Judge denying him a temporary license and document.

#### ORDER

The order of the Administrative Law Judge denying Appellant a temporary document dated at Norfolk, Virginia, on 21 June 1985 is AFFIRMED.

J. S. GRACEY  
Admiral, U.S. Coast Guard  
Commandant

Signed this 6th day of September 1985.